

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MIROSLAW GORTAT, et al.,

Plaintiffs,

- against -

ORDER  
07-CV-3629 (ILG)

CAPALA BROTHERS, INC., et al.,

Defendants

-----X  
GOLD, S., *United States Magistrate Judge*:

By letter dated February 19, 2009, Docket Entry 105, plaintiffs move to compel discovery. Today, defendants filed a letter, Docket Entry 106, entered on the docket by defendants as their response in opposition to plaintiffs' motion to compel. *See* Docket Entry 106.

Defendants' opposition suffers from three fundamental flaws. First, it is in the form of a letter directed to plaintiffs' counsel rather than a submission to the court. Second, although it is submitted in response to a motion to compel discovery, it purports to invoke Rule 11 of the Federal Rules of Civil Procedure, which does not apply to discovery motions. *See* Fed. R. Civ. P. 11(d). I note that I directed defendants' attention to this provision of Rule 11 in an order denying a motion for sanctions they made earlier in this case. Docket Entry 75 at 4. Finally, the letter is replete with personal attacks upon the integrity of plaintiffs' counsel. This is not the first time such attacks have been made, nor is it the first time I have been forced to caution counsel to refrain from making such attacks. In fact, I have repeatedly urged counsel – on at least one occasion in writing – to cease making personal attacks, and warned that sanctions would be imposed if the attacks continued. Docket Entry 75 at 7. I note that plaintiffs' letter dated February 19, 2009 makes no similar attacks upon counsel for the defendants.

For the reasons stated above, defendants' submission does not constitute proper opposition to

plaintiffs' motion to compel. Defendants may file a proper opposition no later than March 2, 2009. The submission shall not contain any ad hominem attacks against plaintiffs' counsel; any submission that does contain such attacks will not be considered by the court. Failure to file timely opposition, or the filing of an opposition papers containing personal attacks, will result in plaintiffs' motion being granted as unopposed.

**SO ORDERED.**

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/s/  
**Steven M. Gold**  
**United States Magistrate Judge**

**February 26, 2009**  
**Brooklyn, New York**